Criminal Revision No.584 of 2001.
(Old No. 2268 of 1984)

1. Jhabar Singh,
2. Darban Singh, --- Revisionists.
3. Smt. Jihwali Devi,
4. Smt. Maheshwari Devi

Versus

1. State of Uttaranchal,
2. Smt.Parvati Devi --- Opposite parties.

HON'BLE M.C.JAIN, J.

Heard the learned counsel Sri Lokendra Dobhal, for the revisionist and the learned A.G.A.

The revisionists are aggrieved by a judgment and order dated 29.8.1984 passed by the Appellate Court in Criminal AppealNo.01 of 1984, Jhabar Singh and others Versus State and another. The appeal had been preferred by the revisionists against the judgment and order dated 19.12.1983 passed by the Magistrate concerned in Criminal Case No. 20 of 1982, convicting the revisionists for offences under Sections 452, 323, 506, 427 and 394 IPC, and sentencing them for various terms. By the impugned judgment, the Appellate Court set aside the judgment of the Magistrate and remanded back the case to the trial Court for rewriting the judgment and passing the sentences of fine separately under different counts of the I.P.C.

The argument of the learned counsel for the revisionists is that it was not at all proper for the Appellate Court to have remanded back the case to the Magistrate concerned simply for rewriting the judgment for passing sentences of fine separately under different counts. It is urged that as per Section 386(b) Cr.P.C., the Appellate Court

could itself reverse the finding and sentence ... or order retried. The contention is sought to be fortified by a decision of Hon'ble Supreme Court in Mohinder Singh and others Versus State of Punjab and another (AIR 1985 Supreme Court, 383), wherein it has been held that remand of a case by the appellate Court simply for writing fresh judgment, is not proper.

Since the Appellate Court was fully competent to deal with the case finally while sitting in appeal, it was not at all justified and proper for the Appellate Court to have remanded the case simply for rewriting the judgment and passing the sentences of fine separately under different counts of the IPC.

In the result, the revision is allowed. The case is remanded back to the Appellate Court to decide the appeal finally at an early date.

(M.C.Jain,J.)

Nainital.
04.10.2001.